

Application No.: 10/699,747  
Filing Date: November 3, 2003

## REMARKS

The following remarks are responsive to the Office Action. Claims 1-10 and 15-20 were pending in this application. As reflected in the listing of claims and discussed in greater detail below, Claims 1, 15, 19 and 20 are amended herein. Claims 11-14 were previously cancelled without prejudice. Applicant respectfully requests the Examiner to reconsider the present application in view of the foregoing amendments and the following comments. This Office Action response is accompanied by a Request for Continued Examination.

### **Claim Rejections under 35 U.S.C. §112**

Claim 20 stands rejected under 35 U.S.C. §112, second paragraph because of lack of antecedent support. Specifically, the Office Action indicates that there is insufficient antecedent basis for the limitation "*the working end*." In view of the clarifying amendments made herein, this rejection is now moot. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

### **Objections to the Specification under 35 U.S.C. §132**

In the present Office Action, the Examiner objects to amendments introduced in the response filed with the U.S. PTO on November 19, 2008. Applicant respectfully disagrees with this objection. However, in order to further prosecution and expedite allowance of the present application, clarifying amendments are made herein to independent Claims 1, 15 and 19. In view of these amendments, this objection is now moot. Accordingly, Applicant respectfully requests that this objection be withdrawn.

### **Claim Rejections under 35 U.S.C. §102**

Claims 1-4, 15-17, 19 and 20 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,423,078 to Bays et al. ("Bays"). Applicant disagrees with the Examiner's characterization of Bays in view of the rejected claims, and Applicant respectfully traverses the rejection of these claims. However, as noted above, in order to expedite prosecution and to further clarify the differences between these claims and the cited reference, Applicant has made certain clarifying amendments to independent Claims 1, 15 and 19 herein. Applicant reserves the

**Application No.: 10/699,747**  
**Filing Date: November 3, 2003**

right to pursue claims similar to the original claims or previously-pending versions of the claims in a continuing application.

Applicant submits that all the claims as presented herein are novel and non-obvious over Bays. Bays fails to teach or suggest one or more limitations of independent Claims 1, 15 and 19, as amended herein. For example, Bays does not disclose applying against the skin surface of a patient an instrument body having a distal working end, which includes a working surface at the end of a longitudinal axis and which carries an abrading structure having a plurality of sharp elements for engaging and abrading the skin surface (*see Claim 1*). Further, Bays fails to teach or suggest an abrading structure and at least one aperture that is coupled to a vacuum source being positioned within a raised outer periphery which completely circumscribes the abrading structure and the aperture (*see Claim 1*). Moreover, Bays does not disclose, among other things, contemporaneously actuating a vacuum source to cause suction engagement of the skin surface against the raised outer periphery and the plurality of sharp elements of the working surface (*see Claim 1*).

In addition, Bays does not disclose translating a working surface of a handheld device relative to the skin surface with the working surface having an abrasive structure configured to abrade the skin surface and with an aperture in the working surface, such that an outer periphery encircles the abrasive structure and the aperture, and at least a portion of the abrasive structure is spaced from the aperture (*see Claim 15*). Further, Bays fails to disclose, among other things, continuously applying a vacuum through an aperture formed in the working surface in order to draw the skin against the outer periphery and the abrasive structure (*see Claim 15*).

Moreover, Bays does not disclose translating a handheld device relative to a skin surface with a working surface of the handheld device that includes an abrasive structure at its distal end and at least one aperture located at or near the working surface, such that the abrasive structure and the aperture are circumscribed by an outer periphery of the working surface (*see Claim 19*). Further, Bays fails to disclose, among other things, continuously aspirating debris through at least one aperture while the skin surface is being abraded (*see Claim 19*).

Accordingly, for at least these reasons, Applicant submits that amended Claims 1, 15 and 19 are novel and non-obvious, and thus, are in condition for allowance.

**Application No.: 10/699,747**  
**Filing Date: November 3, 2003**

Claims 2-10 depend from Claim 1 and further define the invention defined in Claim 1. In addition, Claims 16-18 depend from Claim 15 and further define the invention defined in Claim 15. Finally, Claim 20 depends from Claim 19 and further defines the invention defined in Claim 19. Thus, for at least the reasons set forth above with respect to amended Claims 1, 15 and 19, Applicant submits that Claims 2-10, 16-18 and 20 are patentably distinguished over Bays. Further, these claims are distinguished over Bays in view of the additional limitations defined in each of the claims. Therefore, Applicant respectfully requests that this rejection be withdrawn.

**Claim Rejections under 35 U.S.C. §103**

Claims 5-8 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bays in view of U.S. Patent No. 6,869,611 to Kligman et al. (“Kligman”). In addition, Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bays in view of U.S. Patent No. 5,037,432 to Molinari (“Molinari”). Further, Claim 10 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bays. Applicant disagrees with the Examiner’s characterization of these references in view of the pending claims, and Applicant respectfully traverses all of these rejections. As noted above, Claims 5-10 depend from amended Claim 1, which Applicant submits is novel and non-obvious over the cited references. Likewise, as noted above, Claim 18 depends from amended Claim 15, which Applicant submits is novel and non-obvious over the cited references. Thus, for at least the reasons set forth above with respect to Claims 1 and 15, Applicant respectfully submits that each of Claims 5-10 and 18 is patentably distinguished over the cited references, either alone or in combination with one another.

**No Disclaimers or Disavowals**

Although the present communication may include alterations to the subject application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the

**Application No.: 10/699,747**  
**Filing Date: November 3, 2003**

present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

*Co-Pending Applications of Assignee*

Applicant provides the following table to aid the Examiner during prosecution. The following U.S. patents and patent applications are related to the above-captioned application in that they have at least one listed inventor or assignee in common with the above-captioned application:

Attorney Docket No.	Application No. (U.S. Patent No.)	Filing Date (Issue Date)	Title
EDGE.004A	11/053,409 (US 6,641,591)	Aug. 25, 2000 (Nov. 4, 2003)	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C2	11/417,709	May 3, 2006	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C3	11/417,396	May 3, 2006	Instruments and Techniques for Controlled Removal of Epidermal Layers
EDGE.004C1DV1	11/739,615	Apr. 24, 2007	Instruments and Techniques for Controlled Removal of Epidermal Layers

Copies of these patents, patent applications, and pending claims, including any office actions, allowances and/or other communications, are available through PAIR. However, if the Examiner so requests, Applicant will be happy to provide the Examiner with copies of any applications, pending claims, office actions, allowances, communications or any other documents, at any time.

Further, Applicant notes for the record that the claims of the present application are different and may be broader in scope than the claims in any related patent or application. To the extent that any statements made in a related case (such as amendments or characterizations regarding the scope of a claim or prior art) could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant rescinds and retracts such disclaimer. Accordingly, any listed or referenced prior art may need to be re-visited. Further, any objections or rejections made by the Examiner in the issued and allowed cases identified above may need to be re-visited.

**Application No.: 10/699,747**  
**Filing Date: November 3, 2003**

Claims canceled in this application are done so without prejudice. Applicant is not conceding that the previously pending claims are not patentable over the art of record. Applicant reserves the right to later pursue any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Application No.: 10/699,747  
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#### CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are now in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the claims in light of the amendments and the above remarks. As noted above, this amendment and response is being filed with a Request for Continued Examination.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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